

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-311
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

**COMMENTS OF THE COMMUNITY PROGRAMMING BOARD
OF FOREST PARK, GREENHILLS, AND SPRINGFIELD TOWNSHIP, OHIO**

These Comments are filed by the Community Programming Board of Forest Park, Greenhills, and Springfield Township (CPB) in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). The CPB is a joint government operating board, responsible for franchise negotiation, monitoring of franchise compliance by cable operators, resolution of cable related customer service issues, and operation of the PEG access channels for the City of Forest Park, Village of Greenhills, and Springfield Township, Ohio. Like NATOA, the CPB communities believe that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

Forest Park is a City with a population of 19,463. Greenhills is a Village with a population of 4,103. Springfield Township is a township with a population of 37,587. Our franchised cable provider is Time Warner Cable. The CPB has negotiated cable franchises for these communities since 1980.

Our Current Franchise

Our current franchise period is as follows - Forest Park: Began 11/18/1996, Expires 11/18/2021; Greenhills: Began 11/18/1996, Expires 11/18/2021; Springfield Township: Began 10/29/1996, Expires 10/28/2021. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the capacity for public, educational, and governmental ("PEG") access channels on the cable system. We currently have 3 channels devoted to public access; 1 channel devoted to educational access; and 1 channel devoted to government access. In addition, an additional 4 channels are available for PEG access use, if needed

Our franchise requires that our PEG channels receive technical and engineering support as needed from cable operator. It also requires the cable operator to provide two way signal transmission paths between the PEG master control and the cable system headend, and to provide the necessary switching equipment to enable subscribers in the community to receive the access channels. In addition, the cable company offered, and we agreed to accept, 75 cents per month per subscriber "to pay for public, educational, and government access (PEG) and other cable related services to be provided by the CPB." This language is contained in a supplemental agreement to the franchise.

Our franchise contains the following requirements regarding emergency alerts: "The Grantee shall incorporate into its facilities the capability for an emergency interrupt per existing and future FCC regulations and federal law." These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains the following reasonable build schedule for the cable operator: "Such a Fiber Optic Network shall be fully constructed and in operation within three (3) years of Grantee's acceptance of this agreement."

Our franchise requires that the cable operator currently provide service to the following areas of our community: "all areas of the [City, Village, Township] in which a minimum density of twenty five (25) homes per mile exists upon completion of the upgrade of the system."

(NOTE: the phrase [City, Village, Township] will be used throughout this filing to indicate that the statements apply to all three franchises, which are identical except for the community name and this designation).

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements:

- "Fiber optic cables comprising a system "backbone" shall be installed from the headend to points in the system known as "fiber hubs" and branching to neighborhood units called "nodes" or "cells," where signals transfer between the fiber backbone and coaxial cables."
- "Grantee agrees to deploy a new consumer converter device in all subscriber homes within two (2) years after completion of Phase I in the [City, Village, Township]."
- "Grantee agrees that the rebuilt system will have seventy five (75) channels active upon the completion of the rebuild in the [City, Village, Township] for consumer use."

- “Such new consumer converter device shall comply with all Federal Communications Commission rulemakings, decisions and reports addressing consumer compatibility between consumer electronics and the converter.”

The system, which was upgraded ahead of schedule and with greater capacity than required, also provides cable modem capability to all potential subscribers in the CPB communities.

Our franchise contains an "equal treatment" provision which states the following:

B. If the [City, Village, Township] issues another franchise to any entity for the provision of Cable Television service, any such franchise shall not be on more favorable or less burdensome terms and conditions with respect to those requirements contained herein pertaining to equipment, facilities, services or regulatory requirements including, but not necessarily limited to, the franchise fee, bond and insurance. If the [City, Village, Township] does grant a franchise on more favorable terms and conditions, then this Franchise shall be amended by the [City, Village, Township] and the Grantee, to incorporate the more favorable or less burdensome term(s) and condition(s), unless the Grantee has been provided with the notice of terms and conditions of any such franchise at least at least sixty (60) days calendar days prior to its acceptance by the [City, Village, Township] and has not filed an objection to those terms and conditions.

C. The Grantee shall have sixty (60) calendar days from receipt of such notice to specify terms and conditions Grantee would consider more favorable and require as amendments to this Franchise. The [City, Village, Township] may then remove the more favorable or less burdensome term(s) and condition(s) from the new franchise; or agree that the Franchise may be modified accordingly. The Grantee shall be deemed to have declined, waived or otherwise rejected those more favorable requirements if the Grantee does not act within sixty (60) days of the [City, Village, Township]'s notice. Nothing contained herein shall, however, constitute a waiver of any right the [City, Village, Township] or Grantee may have under state or federal law.

Our franchise contains the following insurance and bonding requirements:

-A general comprehensive public liability insurance ... with a minimum liability of one million dollars (\$1,000,000) for bodily injury or personal injury (including defamation, invasion of privacy and emotional or psychological damage) or death to any one person and two million dollars (\$2,000,000) for bodily injury or personal injury (including defamation, invasion of privacy, and emotional or psychological damage) or death of any two or more persons in any one occurrence.

-Property damage insurance with a minimum liability of \$500,000 for property damages resulting from any one incident.

-Grantee shall maintain, and by its acceptance of this Franchise, specifically agrees that it will maintain throughout the term of this Franchise, a faithful performance

bond running to the [City, Village, Township], with a good and sufficient surety approved by the [City, Village, Township], in the penal sum of \$25,000

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office (Forest Park only) as well before it may access the public rights of way. There is no charge for this permit for any cable provider holding a valid franchise and paying franchise fees.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement:

- The [City, Village, Township] Agent, or his / her duly designated officers, agents or representatives, shall have access to all books of accounts and records of the Grantee for the purpose of ascertaining the correctness of any and all reports required by this franchise or required by the FCC to be filed with the [City, Village, Township], or of ascertaining Grantee's compliance with this agreement or any other applicable law, and may examine its officers and employees under oath in respect thereto.
- A report shall be filed by the Grantee with the [City, Village, Township] Agent within ninety (90) days following the end of each calendar year, or portion thereof, during which this franchise is in effect.
- The [City, Village, Township] Agent may audit the books and records of the Grantee to verify the amount of franchise fee owed and paid as well as compliance with other provisions of this franchise.
- Notice of all copies of all petitions, applications, and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matter affecting the operation of the Cable System or Grantee's corporate operations shall be submitted simultaneously to the Community Programming Board and the [City, Village, Township] by filing the same with the [City, Village, Township] Agent.
- Grantee shall maintain and file with the CPB and the [City, Village, Township] a complete schedule of subscriber rates including all fees and charges for services not subject to approval by the [City, Village, Township].
- The Cable Television System, and all parts thereof, shall be subject to the right of periodic inspection by the [City, Village, Township].
- As a result of any violations or breach by the terms or conditions of its franchise of this Agreement, the [City, Village, Township] may charge to and collect from the Grantee and Grantee hereby agrees to pay the following liquidated damages:
 - A. For failure of the Grantee to complete the System Upgrade in accordance with this franchise unless the [City, Village, Township] approves the delay, the damage shall be Six Hundred Dollars (\$600.00) per day for each day, or part thereof, for as long as such failure occurs or continues.
 - B. For failure of the Grantee to provide data, documents, reports or information or to participate with the [City, Village, Township] during a Cable System review and evaluation or to participate with the [City, Village, Township] during a Cable System

review and evaluation, the damage shall be Two Hundred Fifty Dollars (\$250.00) per day.

D. For failure of the Grantee to comply with the construction or technical standards required by this Agreement, the damage shall be Three Hundred Dollars (\$300.00) per day.

E. For failure of the Grantee to comply with any of the provisions of this franchise or Agreement, or for failure to comply with applicable provisions of Federal, State, or [City, Village, Township] law or Ordinance, for which a penalty is not otherwise specifically provided, the damage shall be Three Hundred Dollars (\$300.00) per day.

- Grantee may not sell, assign or transfer the rights, privileges, and franchise granted hereunder, in whole or in part, and control of the Grantee may not be transferred to any other person without the prior written consent of [City, Village, Township] expressed by resolution or agreement.
- In addition to all other rights and powers reserved or pertaining to the [City, Village, Township], the [City, Village, Township] reserves as an additional and as a separate and distinct remedy the right to revoke this Franchise and all rights and privileges of the Grantee hereunder in any of the following events or for any of the following reasons:
 - A. The Grantee shall by act or omission violate any term or condition of this Agreement the Exhibits thereto or any other [City, Village, Township] Ordinance relating to cable, and shall within thirty (30) days following written demand by the [City, Village, Township] to cure such noncompliance, fail to do so.
 - B. The Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt; or all or part of Grantee's facilities should be sold under an instrument to secure a debt and are not redeemed by Grantee within thirty (30) days from said sale.
 - C. The Grantee attempts to or does practice any fraud or deceit in its conduct or relations under this Franchise.
- In order to assure that the Grantee is complying with the terms of this franchise and to assure the character, quality, efficiency, and level of service to be rendered, given, performed, and furnished under this franchise, the [City, Village, Township] Council may hold a public hearing or hearings during the terms 5th, 10th, 15th and 20th Anniversary Years of this franchise and upon completion of the System Upgrade in the [City, Village, Township] for the purpose of reviewing the performance of the Grantee under the franchise.

The Franchising Process

The cable system serving our community also serves many adjoining communities. As noted above, these three communities worked together issue a cable franchise for Time Warner Cable. This allowed the company to quickly obtain franchises in these communities so as to be able to serve a large region, while also allowing for the possibility of individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local

government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: “Notwithstanding any other provisions of this Franchise to the contrary, the Grantee shall at all times comply with all laws and regulations of the state and federal governments or any administrative agencies thereof. Provided, however, if any such state or federal law or regulation shall require the Grantee to perform any service or shall prohibit the Grantee from performing any service, or shall permit the Grantee to perform any service, in conflict with the terms of this Franchise or of any law or regulation of the [City, Village, Township], then as soon as possible following knowledge thereof the Grantee shall notify the [City, Village, Township] Agent of the point of conflict believed to exist between such regulation or law and the laws or regulations of the [City, Village, Township] of this Franchise.”

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance, the franchise allows the cable company to appeal any decision and request hearings before the [City, Village, Township] Council.

Competitive Cable Systems

Our communities:

- have never been approached by a competitive provider to provide service.
- have not denied any provider the opportunity to serve in our community.
- do have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

Conclusions

The local cable franchising process functions well in the CPB communities. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is absolutely no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

The CPB communities are eager to provide our residents with a greater degree of cable choice, and the CPB is ready to expedite entry into the video market in our communities. Local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The CPB communities therefore respectfully request that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

Community Programming Board of
Forest Park, Greenhills, and Springfield
Township

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